

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

DAVID JANKOWSKI,

Defendant-Petitioner,

Case No. 17-20401

Honorable Laurie J. Michelson

**ORDER DISMISSING DEFENDANT'S MOTION FOR NEW TRIAL
UNDER FEDERAL RULE OF CIVIL PROCEDURE 60(b)(6) [313]**

After the Sixth Circuit affirmed David Jankowski's unlawful drug distribution and health care fraud convictions, (ECF No. 305), Jankowski filed a motion titled "Defendant's motion for a new trial under Fed. R. Civ. P. 60(b)(6)." (ECF No. 313.) Jankowski sought relief from an "unfair and unjust" judgment. (*Id.* at PageID.6984.) He alleged that his due process rights were violated because, by failing to advise the jury that Jankowski's co-defendant provided perjured testimony and by failing to allow Jankowski to have redirect of his expert witness, the trial judge was biased against him. (*Id.* at PageID.6968–6976.) Jankowski also argued that the government failed to provide exculpatory information in violation of its *Brady* obligations. (*Id.* at PageID.6977–6978.) And Jankowski raised numerous evidentiary violations that he believes occurred during his trial. (*Id.* at PageID.6978–6982.)

But "Rule 60(b) is not applicable to criminal proceedings," *United States v. Diaz*, 79 F. App'x 151, 152 (6th Cir. 2003), and may not be used to disturb a criminal

sentence or conviction. *United States v. Gibson*, 424 F. App'x 461, 464 (6th Cir. 2011); see *MacLloyd v. United States*, No. 24-1505, 2025 U.S. App. LEXIS 2679, at *3 (6th Cir. Feb 5, 2025) (“As a rule of civil procedure, Rule 60(b) does not apply to criminal proceedings and may not be used to disturb a criminal sentence or conviction.”) (internal quotation omitted).

Thus, because Jankowski’s claims are typically raised in a motion to vacate the conviction or sentence under 28 U.S.C. § 2255, the Court, pursuant to *Castro v. United States*, 540 U.S. 375 (2003), directed Jankowski to advise the Court, in writing, by March 20, 2025, as to whether he intended his “motion for new trial” to be a motion under Federal Rule of Civil Procedure 60(b), his first § 2255 motion, or something else. (ECF No. 314.)

In response, Jankowski filed a separate motion under 28 U.S.C. § 2255. (ECF No. 316.) In the first sentence, Jankowski indicates that the motion is a “supplement to what was already submitted to this Court as a Rule 60(b) motion and to treat this prior filing, along with this present motion, and all subsequent additions, as a motion pursuant to 28 U.S.C. § 2255.” (ECF No. 316, PageID.6990.) But motions cannot be “supplements.” And litigants, even those proceeding *pro se*, cannot avoid page limit requirements or requirements for the filing of successive habeas petitions by simply labeling a § 2255 motion a supplement. Indeed, Jankowski’s newly filed § 2255 motion already exceeds the 25-page limit. See E.D. Mich. LR 7.1(d)(3). And it covers the topics in the “Rule 60(b)” motion.

Thus, because motions under Federal Rule of Civil Procedure 60(b) are not the proper way to challenge a conviction in a criminal case, the time for filing a motion for new trial has passed, and Jankowski has now filed a motion under § 2255, his “motion for a new trial under Fed. R. Civ. P. 60(b)(6)” (ECF No. 313) is hereby DISMISSED.

The Court will treat ECF No. 316 as Jankowski’s motion to vacate under 28 U.S.C. § 2255. He will, of course, have the opportunity to submit a reply brief, but any “subsequent additions” will be treated as a second or successive § 2255 motion.

IT IS SO ORDERED.

Dated: March 19, 2025

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE